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# CONSUMER MORTGAGE COALITION

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December 19, 2002

Federal Communications Commission  
Office of the Secretary  
Room 4-C740  
445 12th Street, S.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: CG Docket No. 02-278**

Dear Sirs:

The Consumer Mortgage Coalition ("CMC") appreciates the opportunity to comment on the Notice of Proposed Rulemaking ("NPRM") opening CG Docket No. 02-278, adopted by the Federal Communications Commission ("FCC") on September 12, 2002.

Although we are aware that the comment period for the NPRM has recently closed, we hope that the FCC will still be willing to take into account our comments on the national do-not-call registry proposal discussed in that NPRM. The CMC is a trade association of national residential mortgage lenders, servicers and service providers, including both depository institutions and non-depositaries. **As** the Commission itself notes, it is the Commission, rather than the Federal Trade Commission ("FTC"), that has authority to regulate the telephone sales and advertising practices of "certain entities, including banks, credit unions [and] savings and loan companies." NPRM, para. 10. **As** an association that includes institutions subject solely to the Commission's regulatory authority in this area, as well as institutions subject to both the Commission and the FTC, we believe that our qualified support for the Commission's idea of a national do-not-call registry will be of interest to the Commission.'

The CMC's members **seek** to provide financial services nationwide, taking advantage of economies of scale that allow them to lower the cost of mortgage credit to consumers while remaining profitable. The cost of compliance with burdensome, contradictory rules that vary from state to state – when such compliance is not made impossible by the degree of contradiction – can wipe out whatever economies of scale

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<sup>1</sup> We have made substantially the same points in commenting on the FTC's proposed amendments to the Telemarketing Sales Rule, which included a proposed for a national do-not-call list. Our comment letter to the **FTC** is attached.

our members could otherwise realize. Thus, one of the most important factors in our members' being able to pursue their business plans is their ability to take advantage of uniform, clear national rules whenever possible. In order to avoid subjecting our members' telemarketing operations to the compliance nightmare represented by multiple state do-not-call requirements, we support the idea of a national do-not-call registry, *provided that the national registry preempts all such state laws.*

The need for federal preemption of state do-not-call rules – both for intrastate and interstate calls – is clear. The Commission itself notes that state rules “vary *widely* in the methods used for collecting data, the fees charged, and the types of entities required to comply with their restrictions.” NPRM, para. 60 (emphasis added). In the 36 states that have adopted or considered do-not-call databases, we are not aware of any two state rules being exactly alike. Complying with all of these rules, with their often minute differences, would impose a significant cost on any institution with a national presence that sought to use telecommunications for advertising purposes. And yet, all of these state rules seek to give consumers control over whether they will have to receive telemarketing calls – the same result that a national do-not-call registry would achieve. No purpose is therefore served by allowing the states to legislate varying rules, while it creates significant inefficiencies and costs that are ultimately passed on to consumers. There is thus no good policy reason *nor* to preempt these state do-not-call rules, and compelling reasons of economy and consumer benefit to extend federal preemption to this area.

Moreover, it is clear to us that the Commission has the power to extend preemption this far. As the Commission itself notes, section 227(c)(3) of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(c)(3), empowers the Commission to require “the establishment and *operation of a single national database* to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations[.]” NPRM, para. 49 (emphasis added). Even *Van Bergen v. Minnesota*, cited by the Commission for the proposition that the TCPA grants the Commission limited preemptive power, admitted that “[f]ederal law can preempt state law without an express statement by Congress when the federal statute implies an intention to preempt state law or when state law directly conflicts with federal law.” 59 F.3d 1541, 1548 (8th Cir. 1995). To us, the language emphasized above implies a strong Congressional intention that the Commission be able to establish a single do-not-call list run according to uniform, national rules, with which any inconsistent state laws will be in direct conflict and therefore preempted.<sup>2</sup>

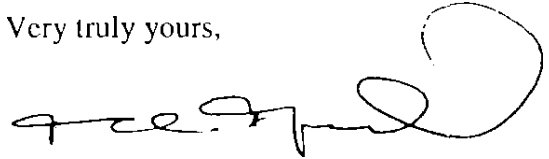
The CMC's members understand that consumers want power over the telemarketing calls they receive. We think consumers should be able to have that power, provided that it comes in a form that does not cause needless inefficiency, confusion and expense. The Commission can empower consumers without causing avoidable damage by replacing the hodge-podge of state do-not-call rules with a single federal standard. So long as the rules governing the Commission's national do-not-call registry are consistent

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<sup>2</sup> This does not, by the way, necessarily conflict with the holding in *Van Bergen*, which concerned the question of whether the TCPA implicitly preempted state regulation of auto-dialing equipment.

with those ultimately decided upon by the FTC, all institutions of national reach, whether or not they *are* subject to FTC jurisdiction, will have a single standard to abide by, lowering their compliance costs. Moreover, all consumers, whatever state they may reside in, will be able **to** use the same procedures to obtain the same control over the telemarketing calls they receive, with no pass-through of institutions' higher regulatory compliance costs. We therefore respectfully urge the Commission to take this approach.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anne C. Canfield', with a large, stylized loop at the end.

Anne C. Canfield  
Executive Director